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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/574,721

11/29/2006

Ewald Schneider

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MARSHALL & MELHORN, LLC
FOUR SEAGATE - EIGHTH FLOOR
TOLEDO, OH 43604

EXAMINER

LEE, DORIS L

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

10/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/574,721	Applicant(s) SCHNEIDER, EWALD	
	Examiner Doris L. Lee	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 13 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 13 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. No new grounds of rejection are set forth below. Thus, the following action is made final. It is noted that claim 11 has been amended to include limitations (the amount of the flameproofing agent has been amended from 1-15% to 5-15%) that were not previously presented, however, the previously presented rejections still read on the newly amended claim limitations.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.
3. All outstanding objections and rejections, except for those maintained below, are withdrawn in light of applicant's amendment filed on June 23, 2009.

Claim Rejections - 35 USC § 103

4. **Claims 11, 13 and 17-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Saga (US 2005/0113496)** in view of **Sugino et al (US 5,895,607)** and **Schmid et al (US 4,963,610)**.

The rejection is adequately set forth in paragraph 4 of the Office Action mailed on March 23, 2009 and is incorporated here by reference. It is noted that the amendment of claim 11 does not change the grounds of rejection as Saga teaches 5 to 50% of the flame retardant is present in the composition which still reads on the newly amended 5-15% by weight of a flame proofing agent as presently claimed.

Response to Arguments

5. Applicant's arguments filed July 23, 2009 have been fully considered but they are not persuasive for the reasons set forth below:

6. **Applicant's argument:** The provisional application of the Saga reference does not provide support for the amount of polyamide stated in the rejection and therefore is not an effective reference against the present application.

Examiner's response: *Saga's provisional application (60/508,540) provides full support for the amount of polyamide in the composition (please refer to page 2 of the specification of the provisional application, lines 27-30). The range 8 to 89.1 % range was calculated from the ratio of the polyamide and the phenolic resins:*

about 20 to about 90 weight percent of (A) polyamide and (B) phenolic resin, wherein the ratio of (A) to (B) is between about 99:1 and about 40:60 by weight;

7. **Applicant's argument:** Saga requires the presence of a phenolic resin.

Examiner's response: *It is noted that the amount of phenolic resin present in Saga's composition ranges from 0.2 wt % - 54 % of the composition. This has been calculated from the information in paragraph [0008] of Saga. As such this amount of phenolic resin falls in the range of component e) of the presently claimed invention, the prior art still reads on the claimed limitations.*

8. **Applicant's argument:** Saga does not teach 20-80% by weight of one or more aliphatic polyamides and 1-40% by weight of one or more partly aromatic amides, the periodical units of which are derived from terephthalic acid and isophthalic acid and adipic acid and also hexamethylene diamine.

Examiner's response: *Saga teaches that a blend of polyamides can be used ([0015]) and Saga also teaches the two types of polyamides that are required by the presently claimed invention, for example polyamide 6 for the aliphatic polyamide ([0017]) and*

polyamide 6T/6I ([0017]) for the partly aromatic polyamide. The partly aromatic periodical units are derived from the desired components ([0016]). It is acknowledged that Saga does not teach the ratio of the two types of polyamides; however, as stated in the rejection, Sugino teaches the ratios.

9. **Applicant's argument:** Saga discloses 5-50% flame retardant, yet the examples show a 20 weight % concentration of flame retardant. There is nothing in Saga suggesting the use of such a small amount of flame retardant as claimed in the present invention.

Examiner's response: *It is noted that the prior art reference is taken as a whole and as such, nonpreferred disclosures can be used. A nonpreferred portion of a reference disclosure is just as significant as the preferred portion in assessing the patentability of claims." See In re Nehrenberg, 280 F.2d 161, 126 USPQ 383 (CCPA 1960).*

10. **Applicant's argument:** Sugino reference utilizes red phosphorus in its flame retardant composition. The present invention avoids the use of red phosphorus.

Examiner's response: *Sugino teaches that red phosphorus is a preferred flame retardant and not the only flame retardant that can be used. Any known flame retardant can be used (col. 5, line 50). It is also noted that Sugino is a secondary reference, used only to teach the blend of aliphatic and partially aromatic polyamide and therefore the red phosphorus does not play a role in the present rejection set forth above.*

11. **Applicant's argument:** One skilled in the art would not be motivated to combine the Sugino and Saga references. Saga does not disclose any teaching combining specific amounts of aliphatic and aromatic polyamides.

Examiner's response: *Saga indicates that mixtures of polyamides can be used ([0015]) and the motivation to use the blend of polyamides is to improve the impact resistance of thin casings (Sugino, col. 2, lines 40-47). Saga does not disclose the amount of each of the two polyamides required, however, as it is taught by Sugino, the argument is not persuasive; one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); In re Merck & Co., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).*

12. **Applicant's argument:** Sugino teaches partly aromatic and aliphatic polyamides in the amount of 10:90 and 90:10 and this range is so broad that one skilled in the art would not derive the particular ratios claimed in the present invention outside of significant experimentation.

Examiner's response: *It is well settled that where the prior art describes the components of a claimed compound or compositions in concentrations within or overlapping the claimed concentrations a prima facie case of obviousness is established. See In re Harris, 409 F.3d 1339, 1343, 74 USPQ2d 1951, 1953 (Fed. Cir. 2005); In re Peterson, 315 F.3d 1325, 1329, 65 USPQ 2d 1379, 1382 (Fed. Cir. 1997); In re Woodruff, 919 F.2d 1575, 1578 16 USPQ2d 1934, 1936-37 (CCPA 1990); In re Malagari, 499 F.2d 1297, 1303, 182 USPQ 549, 553 (CCPA 1974).*

13. **Applicant's argument:** Schmid requires 40-70% magnesium hydroxide and the significant proportion of magnesium hydroxide is unrelated to the components of the present invention.

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Examiner's response: *Schmid is used only to teach the amount of additives that are conventionally used in a flame retardant polyamide composition. The amount of magnesium hydroxide (which acts as the flame retardant in Schmid's composition) is moot and does not overcome the rejection set forth above.*

Conclusion

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Doris L. Lee whose telephone number is (571)270-3872. The examiner can normally be reached on Monday - Thursday 7:30 am to 5 pm and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571)272-1119. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Doris L Lee/
Examiner, Art Unit 1796

/Vasu Jagannathan/
Supervisory Patent Examiner, Art Unit 1796